No. 2550

Brief for in 2543

United States

Circuit Court of Appeals

For the Ninth Circuit.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR of Said City and County,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed

JAN 28 1915

F. D. Monckton,

Clerk.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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In the District Court of the United States, Northern District of California, Second Division.

Nos. 14,735—14,892—15,131—15,569—15,344—15,326.

Division No. 2.

SPRING VALLEY WATER COMPANY, a Corporation,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,

Defendants.

Notice of Motion [for Order Directing Payment of Taxes etc.].

To Spring Valley Water Company a Corporation, and McCutchen, Olney and Willard, Its Attorneys:

To the Crocker National Bank of San Francisco; to the First National Bank of San Francisco; to the Anglo & London Paris Bank of San Francisco; to the Union Trust Company of San Francisco; to the Mercantile National Bank of San Francisco; to the Bank of California National Association of San Francisco; to the Wells Fargo Nevada Bank of San Francisco:

You and each of you will please take notice that on Monday, the 30th day of November, 1914, in the above-entitled court and division, before the Hon. WILLIAM C. VAN FLEET, Judge presiding therein, at the hour of 10 o'clock A. M. or as soon thereafter as counsel can be heard, the undersigned will apply for

an order in the above-entitled court directing the payment of the taxes levied and assessed against the above-named banks as receivers and depositories of moneys in litigation in the above-entitled actions.

Said motion will be based upon this notice, upon the tax bills heretofore rendered, and upon the grounds that said [1*] taxes are due, have not been paid and that Monday the 30th day of November is the last day permitted by law for the payment of said taxes with the addition of penalties.

PERCY V. LONG,
City Attorney.
Attorney for Tax Collector.

[Endorsed]: Filed November 30, 1914. Walter B. Maling, Clerk. [2]

In the District Court of the United States, Northern District of California, Second Division.

Nos. 14,735—14,892—15,131—15,569—15,344—15,326.

SPRING VALLEY WATER COMPANY, a Corporation,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,

Defendants.

Order for Payment of Taxes.

Upon reading the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San

*Page-number appearing at foot of page of original certified Record.

Francisco, and upon motion of Percy V. Long, City Attorney of the City and County of San Francisco, IT IS HEREBY ORDERED that the sum of Two Thousand, Two Hundred Ninety-eight & 16/100 ($2,298.16) Dollars to be paid out of sums deposited subject to order of this Court in the above-entitled actions in the WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO to said Tax Collector, being the taxes levied in accordance with Sections 3647 and 3649 of the Political Code upon certain sums received by said WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO as receivers and depositaries in accordance with orders heretofore made in the above-entitled matters by the above-entitled court; which sums escaped assessment for the fiscal year 1913–14.

AND IT IS FURTHER ORDERED that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of Two Thousand, Two Hundred Ninety-eight and 16/100 ($2,298.16) Dollars as taxes out of the sums impounded and deposited in said bank as aforesaid.

Dated: December 1st, 1914.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 1, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [3]

In the District Court of the United States, Northern District of California, Second Division.

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,

Defendants.

Petition for Appeal.

SPRING VALLEY WATER COMPANY, a Corporation, complainant in the above-entitled action, feeling itself aggrieved by the decision of the Court in said action and the order entered herein on the 1st day of December, 1914, wherein and whereby it was ordered that the sum of $2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of $2,298.16, as taxes, out of the sums deposited and impounded in said bank as aforesaid, comes now, by its undersigned solicitors, and appeals from said order to the United States Circuit Court of Appeals, and prays that this,

its petition for said appeal, may be allowed, [4] and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit; and now, at the time of the filing of said petition for appeal, the said appellant files an assignment of errors setting up separately and particularly each error asserted and intended to be urged in the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner further prays that an order be made fixing the amount of the cost bond which this appellant shall give and furnish upon said appeal.

And your petitioner will ever pray.

EDWARD J. McCUTCHEN,
A. CRAWFORD GREENE,
Solicitors for Complainant.

McCUTCHEN, OLNEY & WILLARD,
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [5]

In the District Court of the United States, Northern District of California, Second Division.

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,

Defendants.

Assignment of Errors.

Now comes SPRING VALLEY WATER COMPANY, a corporation, complainant in the above-entitled actions, by its undersigned solicitors, and says that in the record, proceeding and order made and entered in these cases on the first day of December, 1914, wherein and whereby it was ordered that the sum of $2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Wells Fargo Nevada National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Wells Fargo Nevada National Bank of San Francisco for the payment of said sum of $2,298.16, as taxes, out of the sums deposited and impounded in said Wells Fargo Nevada National Bank of San Francisco as aforesaid, there is manifest error, in

that the said complainant has been denied its just rights by the order entered by said district court, and the said complainant [6] thereby assigns and sets out separately and particularly the following errors, viz:

I.

The Court erred in refusing to deny the application of the City Attorney of the City and County of San Francisco, State of California, as attorney for the Tax Collector of said City and County, for an order of the above-entitled court directing the payment of the taxes levied and assessed against the above-named Wells Fargo Nevada National Bank of San Francisco as receiver and depository of moneys in litigation in the above-entitled actions.

II.

The Court erred in making its order directing that the sum of $2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of sums deposited in Wells Fargo Nevada National Bank of San Francisco, subject to the order of said Court in the above-entitled actions, and in further ordering that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said Wells Fargo Nevada National Bank of San Francisco for the payment of said sum of $2,-298.16, as taxes, out of the sums deposited and impounded in said Wells Fargo Nevada National Bank of San Francisco, as aforesaid.

III.

The Court erred in making said order and in holding and deciding that said taxes were assessed and

levied in accordance with Section 3647 and 3649 of the Political Code of California, or in accordance with either of said sections.

IV.

The Court erred in making said order and in holding and deciding that said moneys, deposited in said Wells Fargo Nevada [7] National Bank of San Francisco, as aforesaid, were moneys in litigation in the possession of said Wells Fargo Nevada National Bank of San Francisco as receiver.

V.

The Court erred in making said order and in holding and deciding that said taxes were assessed and levied upon certain sums received by said Wells Fargo Nevada National Bank of San Francisco as a receiver and depositary in accordance with orders heretofore made in the above-entitled actions by the above-entitled court.

VI.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed.

VII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed as moneys in litigation in the possession of said Wells Fargo Nevada National Bank of San Francisco as receiver.

VIII.

The Court erred in making said order and in holding and deciding that said taxes were validly and lawfully assessed and levied as taxes on moneys which

had escaped assessment for the fiscal year 1913–1914.

IX.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 14,275, referred to in the assessment to said Wells Fargo Nevada National Bank of San Francisco, no moneys were on deposit with said Wells Fargo Nevada National Bank of San Francisco on the first Monday in March, 1913. [8]

X.

The Court erred in making said order, because it appears from the undisputed facts of the case that in action No. 26 of the above-entitled actions, referred to in the assessment to said Wells Fargo National Bank of San Francisco, no moneys were on deposit with said Wells Fargo Nevada National Bank of San Francisco on the first Monday in March, 1913.

XI.

The Court erred in making said order and in directing that the sum of $2,298.16 be paid out of sums deposited in said Wells Fargo Nevada National Bank of San Francisco in the above-entitled actions and in not directing or specifying what sum should be paid out of the sum deposited in said Wells Fargo Nevada National Bank of San Francisco in each of said actions.

XII.

The Court was without jurisdiction to make said order, or any order directing payment of taxes out of said moneys, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Wells Fargo Nevada National

Bank of San Francisco pursuant to stipulations by the parties and orders of Court in the above-entitled actions that said moneys should be returned to complainant in the event complainant was successful in said actions, or, in the event that the charges collected by complainant should be held excessive, that said moneys should be refunded to the persons from whom they were collected.

XIII.

The Court was without jurisdiction to make said or any order directing the payment of taxes out of the moneys deposited by complainant with said Wells Fargo Nevada National Bank of San [9] Francisco in action No. 15,344 of the above-entitled actions, because it appears from the undisputed facts of the case that said moneys were deposited by complainant with said Wells Fargo Nevada National Bank of San Francisco pursuant to a stipulation by the parties in the above-entitled action that said deposit should be subject to the condition that any amount so deposited would be repaid to complainant in case it should be successful in said action, or in case the rates fixed by the ordinance in question should be held valid, then said amounts would be returned to the persons entitled thereto, and were not deposited in said Wells Fargo Nevada National Bank of San Francisco pursuant to any order of Court directing that said moneys should be held subject to the order of the Court in the above-entitled action.

XIV.

The Court erred in making said order, because it appears from the undisputed facts of the case that

said Wells Fargo Nevada National Bank of San Francisco had paid the one per cent tax assessed against it for the fiscal year 1913–1914 under the provisions of Article XIII, Section 14, of the Constitution of California.

WHEREFORE, said complainant, Spring Valley Water Company, prays that the order of the above-entitled court be set aside and that an order be entered denying the aforesaid application.

Dated: San Francisco, California, December 30, 1914.

EDWARD J. McCUTCHEN,
A. CRAWFORD GREENE,
Solicitors for Complainant.
McCUTCHEN, OLNEY & WILLARD,
Of Counsel for Complainant.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

In the District Court of the United States, Northern District of California, Second Division.

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,
Complainant,
vs.
CITY AND COUNTY OF SAN FRANCISCO et al.,
Defendants.

Order Permitting an Appeal and Fixing Amount of Cost Bond on Appeal.

WHEREAS, in the District Court of the United States, Ninth Circuit, Northern District of California, on the 1st day of December, 1914, an order was made and entered in the above-entitled cause, wherein and whereby it was ordered that the sum of $2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with WELLS FARGO NEVADA NATIONAL BANK of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further ordered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of $2,298.16, as taxes, out of the sums deposited and impounded in said bank as aforesaid; and,

WHEREAS, Spring Valley Water Company, a corporation, complainant in the above-entitled action has, on this [11] 30th day of December, 1914, filed its petition for the allowance of an appeal from said order to the United States Circuit Court of Appeals, Ninth Circuit, together with an assignment of errors, in and by which said petition it has prayed that an order be made fixing the amount of the cost bond which it shall give and furnish on said appeal:

NOW, THEREFORE, in consideration of the premises, and good cause appearing therefor, it is ordered that said appeal be, and the same is hereby, permitted and allowed.

IT IS FURTHER ORDERED that the said Spring Valley Water Company, a corporation, complainant herein, shall file its undertaking and cost bond in form and substance conditioned and with sureties in accordance with the provisions of the law and the rules and practice of this court, in the said United States District Court in the sum of $300 00/100, which said bond and sureties thereon shall be approved before filing, and said amount is hereby fixed as the amount of said bond. Said bond will be approved by a judge of this court.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

In the District Court of the United States, Northern District of California, Second Division.

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:

That we, SPRING VALLEY WATER COMPANY, a Corporation, as Principal, and MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation organized under the laws

of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto the CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and the Tax Collector of said city and county, in the full and just sum of Three Hundred (300) Dollars, lawful money of the United States, to be paid to the said City and County of San Francisco, a municipal corporation, and the Tax Collector of said city and county, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, representatives and assigns firmly by these presents. [13]

Sealed with our seals, and dated this 30th day of December, 1914.

WHEREAS, the above-named complainant, Spring Valley Water Company, a corporation, has obtained from the District Court of the United States, Northern District of California, its order allowing said complainant to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse an order made and entered in the above-entitled actions, wherein and whereby it was ordered that the sum of $2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with WELLS FARGO NEVADA NATIONAL BANK OF SAN FRANCISCO, subject to the orders of the above-entitled court in the above-entitled actions, and wherein and whereby it was further or-

dered that John A. Schaertzer, Special Master in Chancery in said actions, draw his check upon said bank for the payment of said sum of $2,298.16, as taxes, out of the sums deposited and impounded in said bank as aforesaid;

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, Spring Valley Water Company, a corporation, shall prosecute such appeal to effect, and answer all costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, said SPRING VALLEY WATER COMPANY, a corporation, has caused these presents to be executed by its Vice-president and Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and said MASSACHUSETTS BONDING AND INSURANCE COMPANY, a Corporation, has caused [14] these presents to be executed by its Attorneys in Fact, thereunto duly authorized, and its corporate seal to be hereunto affixed, this 30th day of December, 1914.

SPRING VALLEY WATER COMPANY.

[Seal] By S. P. EASTMAN,
Vice-President.

By JOHN E. BEHAN,
Secretary.

MASSACHUSETTS BONDING AND INSURANCE COMPANY.

[Seal] By JOHN H. ROBERTSON and
FRANK M. HALL,
Attorneys in Fact.

The foregoing bond is hereby approved this 30th day of December, 1914.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Dec. 30, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

In the District Court of the United States, Northern District of California, Second Division.

Nos. 14735—14892—15131—15569—15344—26.

SPRING VALLEY WATER COMPANY, a Corporation,

Complainant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.

Defendants.

Praecipe [for Transcript of Record].

The clerk of the above-entitled court will please prepare a transcript of the record for the Appellate Court in the above-entitled cause, and is directed to insert therein the following:

(1) The notice of motion for an order directing the payment of taxes on the impounded moneys.

(2) The order of Court directing that the sum of $2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Wells Fargo Nevada National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions.

(3) All papers filed by complainant, Spring Valley Water Company, a corporation, in the prosecution of its appeal, including petition for appeal, assignment of errors, [16] order permitting appeal, and citation on appeal, the appeal bond and the approval of the same.

EDWARD J. McCUTCHEN,
A. CRAWFORD GREENE,
Solicitors for Complainant.
McCUTCHEN, OLNEY & WILLARD,
Of Counsel for Complainant.

[Endorsed]: Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [17]

In the District Court of the United States, in and for the Northern District of California, Second Division.

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,
Complainant,
vs.
CITY AND COUNTY OF SAN FRANCISCO, et al.,
Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, WALTER B. MALING, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the forego-

ing seventeen (17) pages, numbered from 1 to 17 inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is $10.40; that said amount was paid by Messrs. McCutchen, Olney & Willard, Attorneys for plaintiff; and that the original citation issued herein is hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 5th day of January, A. D. 1915.

[Seal] WALTER B. MALING,
Clerk.
By J. A. Schaertzer,
Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled Jan. 5, 1915. J. A. S.] [18]

In the District Court of the United States, Northern District of California, Second Division.

Nos. 14,735—14,892—15,131—15,569—15,344—26.

SPRING VALLEY WATER COMPANY, a Corporation,
Complainant,
vs.
CITY AND COUNTY OF SAN FRANCISCO, et al.,
Defendants.

Citation [on Appeal (Original)].

United States of America,—ss.

THE PRESIDENT OF THE UNITED STATES to CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, the TAX COLLECTOR of said City and County, and PERCY V. LONG, City Attorney, Attorney for said Tax Collector and for said City and County, Greeting:

YOU ARE HEREBY CITED and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City and County of San Francisco, State of California, on the 29th day of January, 1915, being within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the Clerk's Office of the District Court of the United States, for the Northern District of California, Second Division, wherein Spring Valley Water Company, [19] a corporation, complainant in said actions, is appellant, and you are appellees, to show cause, if any there be, why the order made and entered in said actions, wherein and whereby it was ordered, as in said order allowing appeal mentioned, that the sum of $2,298.16 be paid to the Tax Collector of the City and County of San Francisco, State of California, out of certain sums deposited with Wells Fargo Nevada National Bank of San Francisco, subject to the orders of the above-entitled court in the above-entitled actions, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 2d day of January, 1915.

WM. C. VAN FLEET,
United States District Judge. [20]

Service of the within citation and receipt of a copy is hereby admitted this 2d day of January, 1915.

PERCY V. LONG.

[Endorsed]: No. 14,735, 14,892, 15,131, 15,569, 15,344 and No. 26. In the District Court of the United States, Second Division, Northern District of California. Spring Valley Water Company, a Corporation, Complainant, vs. City and County of San Francisco et al., Defendants. Citation. "E." Filed Jan. 2, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No 2550. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation and the Tax Collector of Said City and County, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Second Division.

Filed January 5, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

Nos. 2547–2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,

Respondents.

Stipulation [Re Agreed Stipulation as to Facts in Spring Valley Water Company vs. City and County of San Francisco et al., No. 2543 etc.].

Whereas, on the first day of December, 1914, the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

Whereas, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to fact; and,

Whereas, in action No. 2543 in the above-entitled Court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to Facts is fully set out and contained in

the transcript of the record in said District Court; and,

Whereas, the parties hereto are desirous of avoiding unnecessary incumbrance of the transcripts of the records in the appeals from said orders, and are also desirous of reducing the cost of preparing said transcripts;

Therefore, it is hereby stipulated and agreed by and between the parties hereto that the Agreed Stipulation as to Facts contained in the transcript of the record in action No. 2543 in the above-entitled court may, for the purposes of appeal, be considered as a part of each of the transcripts of the records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

EDWARD McCUTCHEN,
A. CRAWFORD GREENE,
Solicitors for Appellant, Spring Valley Water Company.

McCUTCHEN, OLNEY & WILLARD,
Of Counsel for Appellant.

PERCY V. LONG,
City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2547–2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Re Agreed Stipulation as to Facts, etc. Filed Jan. 5, 1915. F. D. Monckton, Clerk.

At a stated term, to wit: the October Term A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eleventh day of January, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM C. VAN FLEET, District Judge.

Nos. 2547 to 2559, inclusive.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and TAX COLLECTOR OF SAID CITY AND COUNTY,

Appellees.

Order That Agreed Stiplation of Facts in Spring Valley Water Co. vs. City and County of S. F. may be Considered Part of Records in the Above-entitled Actions, etc.

On motion of Mr. A. Crawford Greene, counsel for the appellants, and by consent of Mr. Percy V. Long, counsel for the appellees, and pursuant to the stipulation of counsel filed January 5, 1915, it is ORDERED that the Agreed Stipulation as to facts contained in the Transcript of the Record in the cause entitled Spring Valley Water Company, a corporation, Ap-

pellant, vs. City and County of San Francisco, a Municipal Corporation, and Tax Collector of said City and County, Appellees, No. 2543, may, for the purposes of appeal, be considered as a part of each of the Transcripts of the Records in the above-entitled actions in the same manner and to the same effect as if fully set out and inserted in each of said transcripts.

On like motion, it is FURTHER ORDERED, that the above-entitled causes be, and hereby are assigned for hearing with the cause entitled Spring Valley Water Company, a Corporation, Appellant, vs. City and County of San Francisco, a Municipal Corporation and tax Collector of said City and County, Appellees, No. 2543, on March 18, 1915, and that all of said cases may be submitted on one brief on behalf of each of the respective parties hereto.

In the United States Circuit Court of Appeals for the Ninth Circuit.

Nos. 2543—2547—2548—2549—2450—2551—2552—2553—2554—2555—2556—2557—2558—2559.

SPRING VALLEY WATER COMPANY, a Corporation,

Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO et al.,

Respondents.

Stipulation [That Agreed Stipulation of Facts Contains All Material Facts, etc.].

WHEREAS, on the first day of December, 1914,

the District Court of the United States, Northern District of California, Second Division, in actions Nos. 14,735—14,892—15,131—15,569—15,344 and 26, made and entered fourteen separate orders wherein and whereby it was ordered and directed that specified sums of money be paid to the Tax Collector of the City and County of San Francisco out of certain sums deposited with certain banks and depositories, subject to the orders of the aforesaid District Court in the aforesaid actions; and,

WHEREAS, by stipulation of the parties hereto, each of said orders was made upon the same Agreed Stipulation as to facts; and,

WHEREAS, in action No. 2543 in the above-entitled court, on appeal from one of the aforesaid fourteen orders of said District Court, the said Agreed Stipulation as to facts is fully set out and contained in the transcript of the record in said District Court; and,

WHEREAS, by stipulation of the parties hereto and an order of the above-entitled court made in pursuance of said stipulation, the said Agreed Stipulation as to facts is incorporated by reference in each of the transcripts of the records in actions Nos. 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558 and 2559 in the above-entitled court;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that the said Agreed Stipulation as to facts contains all the material facts upon which the said District Court made its said orders as aforesaid, and that said Agreed Stipulation as to facts contains all the ma-

terial facts which were set out and contained in the affidavit of Edward F. Bryant, Tax Collector in and for the City and County of San Francisco, State of California, which said affidavit is referred to in each of said orders as aforesaid.

Dated Jan. 12, 1915.

E. J. McCUTCHEN,
A. C. GREENE,
Solicitors for Appellant, Spring Valley Water Company.
McCUTCHEN, OLNEY & WILLARD,
Of Counsel for Appellant.
PERCY V. LONG,
City Attorney, Solicitor for Respondents.

[Endorsed]: Nos. 2543, 2547, 2548, 2549, 2550, 2551 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559. United States Circuit Court of Appeals for the Ninth Circuit. Spring Valley Water Company, a corporation, Appellant, vs. City and County of San Francisco et al., Respondents. Stipulation Filed Jan 12, 1915. F. D. Monckton, Clerk.